CORRESPONDENCE AND NEWS OF THE PROFESSION.

Direction of Verdict.

In relation to the practice in Virginia as to directing verdicts, discussed in the February and March numbers of the "Register," the following communication, commenting on the refusal of a writ of error in the case of Chapman's Administratrix *v.* N. & W. Ry. Co., may be of interest to the profession:

Theodore W. Reath, Esq., General Solicitor N. & W. Ry. Co., Philadelphia, Pa.

Dear Mr. Reath:—The refusal of the Court of Appeals to grant a writ of error in the above case is an unqualified approval of peremptory instructions in proper cases. The trial court, as you know, refused all of plaintiff's instructions in this case and gave in lieu thereof, at our request, an instruction directing the jury to find for the defendant; and the jury endorsed the verdict written by counsel without retiring from the bar.

Yours very truly,

CLARENCE C. BURUS.

Lebanon, Va.

News of the Profession.

Mr. Ashby Williams, a member of the Roanoke Bar, and a B. L. of the Class of 1906 of the University, will shortly bring out a compilation of the Virginia corporation laws, annotated and indexed, together with a full collection of forms.

The book will be a little over two hundred pages, and will be similar in form to Corbin's New Jersey Laws, Annotated, and Chilton's West Virginia Laws, Annotated. It will be a handy compilation of the many corporation laws of Virginia, which has been long needed by the profession, and its appearance in the near future will be welcomed.

MISCELLANY.

The Lawyer and the Client.

BY C. H. PATTESON.

"Good morning. Is this Mr. Quickwit?" asked the stranger as he entered my office.

"Yes, sir; have a seat," I replied.

Seating himself, he leaned slightly forward, one hand on each knee. Appearances indicated that something of great importance was on his mind. The happy thought struck me that a valuable piece of legal

business was at hand. His manner indicated that he wanted to talk business, nothing else, and he lost no time in bringing up his subject:

"I want a lawyer," said the stranger. "I have important business on hand. I have a case against certain parties, and I want you to tell me if you can win the suit."

I suggested that he first name the parties against whom he proposed to take action, as it might be that I was connected with them in such way as to prevent my taking a case against them. He named the parties, and I stated that I was in no way connected with them, and was in position to represent him in the proposed action.

In obedience to my request he related what purported to be the facts—all the facts—of the case. At the outset I endeavored to impress him, as is my custom with clients when they first relate their case, with the importance and absolute necessity of a true statement of all the facts out of which the controversy has grown.

"I have now," said the client, "stated to you all the facts of the case. Can you win the suit?"

"My opinion," I replied, "is that upon these facts as you have related them, properly proved in court, I can win your case."

"Will you guarantee to win the case?" asked the client.

"No, I never guarantee to win suits; it is not customary for attorneys to do this. The results of litigation are too uncertain for lawyers to become guarantors of success for their clients." At this the client seemed disappointed.

"I can see no reason why you should not guarantee to win my case if you know the facts, and know the law," the client said in rather positive fashion. Evidently, he was a man who didn't like to deal in uncertainties.

I replied: "It does seem somewhat reasonable that an attorney should guarantee to win a client's case—the guaranty being conditioned upon the facts being proved as stated by the client. But, besides the possibility—almost probability—that there will on the trial of the case be some variance from the facts as stated by the client, or additional facts brought out which were not mentioned in the client's statement of the case, there is the further fact that the judge who presides at the trial, and who decides the law of the case, may not look at the law in the way I do, or the attorney does, and....."

"How many ways are there to look at the law?" was the abrupt interruption of my client.

"What I meant," trying to make the point plain to the client, "was that the judge may think that some other principle of law is applicable to the case; for instance, take a case for damages for a personal injury, I might think that the negligence of the defendant was the proximate cause of the injury, and that therefore plaintiff should

win his case, while the court might be of opinion that the plaintiff's contributory negligence was the proximate cause of the injury, and the plaintiff would lose his case."

"I thought," said the client, "the law was something certain; that it was written in the law books, and that if a laywer had sense enough to read he could tell a man if the law was on his side."

"My friend," said I, "only a very small part of the law is written in the law books."

"Why, then, don't the lawmakers write all the law down in the books so that a man can tell what the law is?" my client asked.

"Because," I replied, "the world could not hold all the books it would require for this purpose. Every imaginable state of facts and occurrence would have to be written down, and the law applicable thereto stated. In short, as every lawyer knows, it is not practicable to have all the law written in the books. There are certain general principles of law applicable to the different classes of human transactions, and each case comes within some certain principle of law. For instance, it is a principle of law that the employer—the master—is liable in damages for injuries occasioned to others by the negligence of his employee—the servant—in the course of the employment. Suppose the driver of your carriage negligently and recklessly drove over somebody in the street, you, and not the driver, would be liable in damages for the injury; while if the driver, when the accident happened had been driving his own carriage and was not in any other's employment, the driver, individually, would be liable in damages for the injury. But, as showing the somewhat abstruse nature of the law, I will ask you this question, which is related to the legal doctrine of master and servant: Suppose that in the case of this carriage driver it had been stipulated in the contract of employment that he was to receive a certain monthly wage; that he was to drive the carriage only from the hours of nine to three of each day; that at three o'clock of each day he should put up the carriage and horses, and use them no more until nine the next morning; now, suppose this driver would take the carriage out some day at five o'clock, without the knowledge or consent of his employer, and haul the driver's best girl to a friend's house for a few hours, and that on this trip the accident occurs to some person in the street, would the employer be liable in this case? Or, suppose the driver, himself, owned the carriage and horses, and had agreed with a man to do certain hauling at so many dollars an hour, and the accident should happen while he was doing this hauling, who would be liable in that case—the owner of the carriage and horses or the man who paid the driver so much per hour to do the hauling? The difficulty is," I went on to state, not waiting for the client to undertake to answer the two legal questions I had propounded, "not so much in knowing what is the law as it is in knowing how to apply the law; that is, knowing what

particular principle of law is applicable to the facts of the case in hand. No two cases, you must remember, are exactly alike; there are always some facts in the one which were not in the other case. If all cases had the same facts there would be little difficulty in applying the legal principles laid down by the courts in the decided cases."

"Hasn't there been some case just like mine decided by the courts?" the client asked.

"I do not recall any adjudicated case precisely similar in all the details to your case," I answered.

"If," said the client, "what you say is true, there is too much uncertainty about the law for my use; I'll not go into it if I can help it."

"The administration of justice," I answered, "is not as much of a gamble as you appear to think it is. However, to show you the truth of what I have said, I will state that our highest courts, themselves, are not by any means unanimous in the decisions they render. Look at the decisions of the Supreme Court of the United States, the highest court in all the land. There are nine judges composing this court, and they are judges who are learned in the law, yet the most important decisions of this court are generally rendered by five judges deciding one way, and the other four dissenting. by which is meant that the four judges say that the other five have decided wrong."

"Which law do we have to follow—that laid down by the five supreme judges, or that laid down by the four judges?" was client's pertinent question.

"Why, it's a case of majority ruling, and we follow the law stated by the five judges. While such opinions may raise doubts as to what is the true law, yet some advantage is gained in having the law expressly stated, so as to be a guide for future action, even though it be unsound law when applied to the test of reason."

When I had made this statement my client sat for some moments in dead silence. Presently, as if an idea had struck him, he asked:

"As you refuse to guarantee that I will win the case, will you not agree to charge me no fee unless you win the case?"

I hesitated a moment before replying, then I said: "Yes, I will agree to do this, but I shall have to charge you a much larger fee under this arrangement than I would otherwise. Under this class of fees, known generally as contingent fees, we usually charge one-half of the amount recovered in the suit."

"Well," said the client, "I would rather pay one-half and be sure to get the other half, than to pay you a large fee—even though it is much less than half of what we expect to recover—and get nothing."

"Of course, you would have the court costs to pay in the event you lost the suit," said I.

"Court costs!" he exlaimed. "You would have to pay that if you stood the chance of getting one-half of what I claim."

"No indeed," I replied, "it is unprofessional and highly improper for the attorney to pay the costs of litigation."

"I do not propose to pay any court costs," said the client, resolutely. Neither of us said anything further for a few moments.

"In view of all the circumstances," said the client, after pondering a while," and the uncertainty as to whether five judges will be on my side of the case, or only four, I think it wise that I try to compromise the case."

The client was at the door, about to leave my office, when he concluded his last remark.

"Wait just a minute," I said to him as he opened the door to leave. "It is customary to settle fees for legal advice at the time the advice is given; you will have to settle now for the advice I have given you."

"For advice!" exclaimed the apparently startled client.

"Yes," I said, "for advice."

"What advice have you given me? I should not know how to act on it if I were disposed to."

"I have," I replied, "shown you the chances for you and against you in a law suit on the case you stated."

"I wanted you to tell me the law, and not what the chances were," said the client. "You did not tell me what I wanted to know. Am I to pay for what I did not get?"

"The fee must be paid; I do not care to argue the matter further with you."

"How much is it?" he gruffly asked.

"One hundred dollars," I answered.

"One hundred dollars?"

"Yes, that is the amount," said I.

Slowly, and in undertones, the client repeated the following words:

"One hundred dollars! One hundred dollars! And for what? For what? Just for an opinion on the chances that five judges will think one way and four another on a certain question!"

He drew up to the table, pulled out his check book, and wrote his check for the one hundred dollars. In the body of the check he wrote:

"For learning to avoid asking *legal advice.*"

Direct Vote for Senators.—The Illinois House of Representatives passed the following joint resolution April 1st:

Resolved, by the House of Representatives of the State of Illinois, the Senate concurring herein, that the Congress of the United States call, and it is hereby requested to call, if the legislatures of two-thirds of the several states make like application, a convention of the several states for the purpose of proposing an amendment to the Constitution of the United States of America providing for the election of senators

to the Senate of the United States by the direct vote of the people of the several states, in order that the said amendment, if formulated and adopted by such convention, may be duly ratified by the constitutional number of the states, by their several legislatures, or by their several conventions.—Chicago Legal News.

IN VACATION.

The Law and the Lady.—A young lady was recently sued in a London County Court for a balance due on Stock Exchange transactions. Between the date of the transactions and the action she had married. Judgment was given against her, and a few days afterwards her counsel found the following lines from the judge in his letterbox:

Overheard in the ——— County Court.
[After—a long way after—Goldsmith.]

When lovely woman stoops to flutter,
  And learns, too late, that 'tapes' betray,
What art can save her bread and butter?
  What charm avert the settling day?

The only art her loss to cover,
  The half-commission man to parry;
To bring contentment to her lover
  And dish the broker, is—to marry.

—London Law Journal.

Nothing but the Truth.—Attorney, much baffled by the answers of an Irish witness—"Well, you're a nice sort of a fellow, you are!"

The Witness—"Shure, an' I'd say the same of you, Sir, only I'm on me oath."

"Of course a woman is a person and so is a corporation." And this from Kentucky. See opinion of O'Rear in Carrithers *v.* Shelbyville, 17 L. R. A. (New Series) p. 421.

A Mean Trick.—In People *v.* Solomon, 106 N. Y. Sup. 1111, Hale, J., said: "It is questionable procedure, to say the least, to take an intoxicated person, who has gone to bed and is quiet, and put him into the street in order to arrest him for intoxication in a public place without a warrant. It seems to have been an imitation of the practice of the legendary doctor, who, when he did not know how to treat his patient, threw him into fits and treated the fits." We wonder if the defendant really was guilty of "intoxication in a public place without a warrant?"—National Corporation Reporter.